Sand Mountain Minerals, Inc. *and* **United Mine Workers of America.** Case 10-CA-16600

June 30, 1981

DECISION AND ORDER

Upon an amended charge filed on January 26, 1981, by United Mine Workers of America, herein called the Union, and duly served on Sand Mountain Minerals, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 10, issued a complaint on January 29, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on December 9, 1980, following a Board election in Case 10-RC-12119, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about January 13, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On February 13, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint. Respondent admits receipt of the charge filed by the Union on January 26, 1981, and that it meets the Board's jurisdictional standards. Respondent admits that an election was held among its production and maintenance employees in Bryant and Rosalie, Alabama, on June 26, 1980, but denies that an uncoerced majority of the employees designated the Union as their exclusive representative. Respondent admits that the Board certified the Union as representative, but asserts that the certification issued erroneously because the Board improperly failed to sustain its objections to the conduct of the election. Respondent admits that the Union requested bargaining and that it refused this request, but denies that it thereby violated Section 8(a)(5) and (1) of the Act.

On April 27, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 1, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and its response to the Notice To Show Cause, Respondent asserts that the Board erred in certifying the Union as representative and by failing to sustain its objections to the conduct of the election.

Review of the record herein reveals that in Case 10-RC-12119 the Union filed the petition for an election on May 23, 1980. The Regional Director approved the parties' Stipulation for Certification Upon Consent Election on June 24, 1980, and the election took place on June 26, 1980. The tally of ballots revealed that, of approximately 82 eligible voters, 43 cast valid votes for, and 36 cast valid votes against, the Union. There were four nondeterminative challenged ballots. Respondent filed timely objections to the conduct of the election on July 3, 1980, alleging that the Union interfered with the election by statements designed to threaten, coerce, intimidate, and mislead employees. Following an investigation the Regional Director ordered a hearing on the objections. The Hearing Officer's report issued on August 28, 1980, wherein he concluded that the Union was not responsible for the two instances of threatened physical harm occurring prior to the election and that union officials' statements at a meeting 2 days before the election did not contain material misrepresentations and, therefore, the objections should be overruled and the Union certified. Respondent filed exceptions to the Hearing Officer's report, contending that the threats of physical harm created a general atmosphere of fear and confusion which tainted the election conditions and that the Union's statements about possible firings contributed to the coercive atmosphere and that the election should be set aside. On December 9, 1980, the Board issued its Decision overruling Respondent's objections on the basis that the record failed to establish that the third-party conduct was sufficiently disruptive of the election conditions to warrant setting aside the election and because the Union's statements were

[1] Official notice is taken of the record in the representation proceeding, Case 10-RC-12119, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

of the type which the employees could reasonably be expected to evaluate during the course of an election campaign. The Board certified the Union as the collective-bargaining representative.

Following the Union's request, on December 19, 1980, that Respondent engage in collective bargaining with the Union, Respondent, on January 13, 1981, and at all times thereafter, refused to bargain collectively with the Union.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[2]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is an Alabama corporation engaged in the mining of coal with an office and strip mine in Pisgah, Alabama, and surface mine pits in Bryant and Rosalie, Alabama. During the last 12 months, a representative period, Respondent has purchased and received at its Pisgah, Alabama, facility supplies valued in excess of $50,000 directly from suppliers located within the State of Alabama, who, in turn, purchased said supplies directly from suppliers outside the State of Alabama.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Mine Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by the Employer at its surface mine pits at Bryant, Alabama, and at Rosalie, Alabama, in Jackson County, Alabama, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On June 26, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 10, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on December 9, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about December 19, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about January 13, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since January 13, 1981, and at all time thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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[2] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941), Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Sand Mountain Minerals, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Mine Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Employer at its surface mine pits at Bryant, Alabama, and at Rosalie, Alabama, in Jackson County, Alabama, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since December 9, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about January 13, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Sand Mountain Minerals, Inc., Jackson County, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Mine Workers of America as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees employed by the Employer at its surface mine pits at Bryant, Alabama, and at Rosalie, Alabama, in Jackson County, Alabama, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if

an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Bryant, Alabama, and Rosalie, Alabama, facilities copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Mine Workers of America as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenence employees employed by the Employer at its surface mine pits at Bryant, Alabama, and at Rosalie, Alabama, in Jackson County, Alabama, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

SAND MOUNTAIN MINERALS, INC.